

REMARKS

The Office Action mailed November 3, 2008 has been carefully considered. Within the Office Action Claims 21-28, 33, 34 and 41-44 have been rejected. The Applicants have amended Claims 21, 23, 26-28, 33 and 41 and have cancelled Claims 22, 24 and 25. The Applicants reserve the right to further pursue the cancelled claims in a continuation and/or divisional application as well as for appeal purposes. Applicants have also added new claims 45 and 46. Reconsideration in view of the following remarks is respectfully requested.

The 35 U.S.C. § 112, First and Second Paragraph Rejections

Claims 21-26 and 41-44 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was allegedly not described in the specification in such a way as to enable one of ordinary skill in the art to practice the claimed subject matter. Claims 21-28, 33, 34 and 41-44 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter. These rejections are respectfully traversed. However to expedite prosecution of the application, Applicants have amended Claims 21 and 41 and have cancelled Claim 24. Withdrawal of the rejections is respectfully requested.

Rejection under U.S.C. § 102

Claims 21-27 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by either one of U.S. Patent No. 6,169,777 to Yoshizawa et al. (hereinafter “Yoshizawa”) or U.S. Patent No. 5,490,186 to Gilmore et al. (hereinafter “Gilmore”). The Applicants respectfully traverse.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Yoshizawa describes a fuel transport container having a basket that has a basket hole including at least two adjacent inner side walls to be fit to a fuel assembly for housing the fuel assembly element in the basket hole. The fuel assembly element is directly housed in the basket hole of the basket. The fuel assembly housed in the basket hole is slid by bias means toward the two adjacent inner side walls thereof without pushing the fuel assembly thereby biasing the housed fuel assembly so that the fuel assembly element is in contact with the two adjacent inner side walls of the basket hole. (Yoshizawa, Abstract).

Gilmore discloses a shipping container for a hexagonal nuclear fuel assembly including a plurality of grids which support fuel rods; and a bottom nozzle having an internal shoulder within a recess, a spherical taper, and a bottom end. The container include a top nozzle holder secured to the support, plural grid supports secured to the support, plural clamping frames for clamping the grids, plural guide plates for guiding the fuel assembly between adjacent grid supports, and a bottom nozzle holder secured to the support. (Gilmore, Abstract).

Applicants' Claim 21 recites:

A fastening device for securing a fuel assembly in a housing of a transport basket, the assembly having a polygonal section and comprising an upper end piece and a lower end piece and the housing having a polygonal section comprising a first open end and a second end, the fastening device comprising:

a connecting device integral with the fastening device and configured to make a rigid connection between the upper end piece of the fuel assembly and the open end of the housing in a predetermined relative position such that the fuel assembly bears in contact with two adjacent faces of the housing on at least part of its length, the connecting device being placed above the upper end piece of the fuel assembly and configured to suspend the fuel assembly at the upper end piece, a part of the housing located proximal to the second end of the housing and having a smaller cross-section compared to the first end, wherein the second end

has dimensions approximately equal to dimensions of the lower end piece of the fuel assembly.

In contrast to the subject matter in Claim 21, neither Yoshizawa nor Gilmore discloses that the connecting device is integral or formed as part of the fastening device. As shown in the figures of Applicants' specification, the connecting device and the fastening component are indeed one integral part. Instead, both references disclose that the fastening devices are provided between the housing and the fuel spacers of the fuel assembly and are separate components from the connecting device. Additionally, neither Yoshizawa nor Gilmore discloses that the fastening device suspends the fuel assembly in the housing at its upper end. Instead, both references disclose that the clamping means is provided along the whole length of the fuel assembly. Further, neither reference discloses that the fastening device secures the fuel assembly in the housing having a smaller cross-section compared to the first end, wherein the second end has dimensions approximately equal to dimensions of the lower end piece of the fuel assembly. Since neither reference expressly or inherently discloses each and every element/limitation in Claim 21, Claim 21 is distinguishable over Yoshizawa and Gilmore.

Claims 23, 26-28, 33, 34 and 45-46 are dependent on Independent Claim 21. As stated above, Claim 21 is allowable over Yoshizawa and Gilmore. Accordingly, Claims 23, 26-28, 33, 34 and 45-46 are allowable for being dependent on an allowable base claim.

Claims 41-44 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Gilmore. The Applicants respectfully traverse. Gilmore does not expressly or inherently disclose that claw mechanism is engageable to an upper end piece of the transport housing and moves along with the control device in the longitudinal axis in response to the control device being rotated in the first direction, as recited in Claim 41. Instead, the mechanism 238 remains in its vertical position when item 272 is actuated. For at least these reasons, Claim 41 is distinguishable over Gilmore and is in condition for allowance.

Rejection under 35 U.S.C. § 103

Claims 21, 22, 24-28, 33, 34 and 41-44 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Gilmore. This rejection is respectfully traversed.

In determining obviousness four factual inquiries must be looked into in regards to determining obviousness. These are determining the scope and content of the prior art; ascertaining the differences between the prior art and the claims in issue; resolving the level of ordinary skill in the pertinent art; and evaluating evidence of secondary consideration. Graham v. John Deere, 383 U.S. 1 (1966); KSR Int'l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007) (“Often, it will be necessary . . . to look into related teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis **should be made explicit.**”)
(emphasis added).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530 (Fed. Cir. 1983). Thus, when considering the whole prior art reference its entirety, portions that would lead away from the claimed invention must be considered. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983), See M.P.E.P. 2141.02. Thus, it is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731 (Fed. Cir. 1983).

The Applicants would like to note for the record that the Examiner has used the same Gilmore reference to reject the same claims under 35 USC §§102 and 103. In doing this, the

Examiner has not explained how the claims are anticipated in that all their elements and limitations are disclosed in Gilmore (under the requirements of §102), and then are also obvious in light of Gilmore (under the requirements of §103). See M.P.E.P. 2141 ("The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."").

Nonetheless, Gilmore does not teach or suggest each of the elements/limitations as discussed above under the discussion of 35 USC §102. Accordingly, Applicants respectfully request withdrawal of the rejection or at least a more thorough explanation of what Gilmore does not teach (and thus would be obvious to modify or combine with another reference) to establish a *prima facie* case of obviousness.

Claim Objection

Claim 25 is objected to under 31 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 25 has been cancelled and withdrawal of the objection is respectfully requested.

New Claims

The Applicants have added new Claims 45 and 46 to the present application. The Applicants believe that the new claims are fully supported by the specification and no new matter has been added. Allowance of new Claims 45 and 46 is respectfully requested.

Conclusion

It is believed that this reply places the above-identified patent application into condition for allowance. Early favorable consideration of this reply is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-3557.

Respectfully submitted,

Dated: February 3, 2009

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